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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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| THOMAS P. TERLECKY, | } | CASE NO: <u>'14CV0043 CAB NLS</u> |
| Plaintiff, | | COMPLAINT FOR: |
| v. | | BREACH OF THE EMPLOYEE |
| UNITEDHEALTHCARE | | RETIREMENT INCOME SECURITY |
| INSURANCE COMPANY, | | ACT OF 1974; INJUNCTIVE AND |
| Defendant. | | DECLARATORY RELIEF; |
| | | PREJUDGMENT AND |
| | | POSTJUDGMENT INTEREST; AND |
| | | ATTORNEYS' FEES' AND COSTS |

Plaintiff Thomas P. Terlecky ("Plaintiff") herein sets forth the allegations of his Complaint against UnitedHealthCare Insurance Company dba as UnitedHealthcare of California ("UHC" or "Defendant").

PARTIES, JURISDICTION AND VENUE

1. This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (hereinafter "ERISA") as it involves a claim by Plaintiff for employee benefits under an employee benefits plan regulated and governed under ERISA.

2. Jurisdiction is predicated under these code sections as well as 28 U.S.C. § 1331 as this action involves a federal question. This action is brought for the purpose of obtaining benefits under the terms of an ERISA Plan, to clarify and enforce

1 Plaintiff's rights to benefits under this ERISA Plan, to obtain other equitable relief,
2 including but not limited to, restitution, an injunction ordering UHC to qualify
3 Plaintiff for the receipt of benefits and to pay Plaintiff benefits to which he is entitled.
4 This action also seeks prejudgment and postjudgment interest as well as attorneys'
5 fees and costs.

6 3. Plaintiff was enrolled in an employer based Medical Plan insured by UHC
7 through a policy of group medical insurance issued by UHC. During the relevant
8 period plaintiff was covered under this Medical Plan. During the relevant period
9 Plaintiff resided in San Diego County, within the Southern District of California. In
10 addition, the denial of health benefits at issue occurred within the Southern District of
11 California.

12 4. Defendant UHC is a Connecticut corporation with its principal place of
13 business in Hartford, Connecticut. It is authorized to transact and is transacting
14 business in the Southern District of California and can be found in the Southern
15 District of California.

16 5. Because UHC can be found in this judicial district, and because this claim
17 arose within this judicial district, venue in this judicial district is proper pursuant to
18 29 USC § 1132 (e)(2).

19 **STATEMENT OF MATERIAL FACTS**

20 6. At all times relevant, Mr. Terlecky was a beneficiary of the Medical Plan
21 funded by UHC. UHC was the fiduciary of that Plan, and also funded payment of
22 Plan benefits.

23 7. UHC's Medical Plan required that all treatment be conducted by
24 physicians or medical providers that were under contract to UHC. UHC would only
25 pay for treatment outside one of these "network providers" where the treatment was
26 for an emergency, or where the treatment could not be obtained from a network
27 provider.

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1 8. UHC's Medical Plan required that Mr. Terlecky have a "Primary Care
2 Physician," who would make decisions for it as to whether a treatment Mr. Terlecky
3 wished to undergo was medically necessary under the Plan. If the Primary Care
4 Physician deemed a desired treatment to be not medically necessary then UHC would
5 refuse to pay for the treatment. Under the terms of the Medical Plan Mr. Terlecky's
6 Primary Care Physician was Sharp Rees-Stealy Medical Group ("SRS").

7 9. Mr. Terlecky had longstanding back problems. In October of 2010 he had
8 a fusion at L3-L4, which was supposed to correct these problems. In a spinal fusion
9 hardware is inserted into the spine to fasten the damaged and pain generating discs to
10 adjacent healthy discs, therefore immobilizing them.

11 10. The October 2010 fusion was not successful, and the hardware did not
12 properly fuse the spine. Mr. Terlecky underwent a revision in November of 2010,
13 which was also not successful. He underwent a third spinal operation in March of
14 2011, which involved, again, using hardware in an attempt to stabilize the damaged
15 portions of Mr. Terlecky's spine.

16 11. It soon became apparent that this surgery also was unsuccessful. Mr.
17 Terlecky continued to suffer from back pain. This pain was sharp and stabbing in
18 nature and radiated down into Mr. Terlecky's legs. Mr. Terlecky's symptoms of pain
19 were unrelenting, and they worsened with walking, standing, bending, climbing
20 stairs, and virtually every other activity.

21 12. Mr. Terlecky's back problems also resulted in weakness in his legs and an
22 unsteady gait, which would occasionally cause him to fall. He began suffering from
23 incontinence. Mr. Terlecky often could not sleep properly because of his severe pain.
24 He also required continuous use of powerful narcotic drugs to control the pain.

25 13. At thirty-one years of age this combination of pain, weakness and the
26 required use of narcotics made it impossible for Mr. Terlecky to live anything
27 approaching a normal life. His ability to work, to socialize, or to engage in
28 recreational activities was reduced to almost nothing.

1 14. Mr. Terlecky sought additional treatment options. However the
2 physicians at SRS did not provide him with any options other than continued use of
3 narcotic medication and other conservative care. Mr. Terlecky kept insisting to his
4 assigned physicians that the status quo was not acceptable and that he required
5 another surgery. He received vague assurances that another surgery could be
6 performed. However, in spite of Mr. Terlecky's continued urging for over a year
7 these assurances never resulted in a scheduled surgery with an SRS physician.

8 15. Frustrated, Mr. Terlecky sought an opinion from Dr. Rick Delamarter, an
9 out of network physician. Mr. Terlecky met with Dr. Delamarter on August 13, 2012.
10 Dr. Delamarter opined, upon review of Mr. Terlecky's x-rays, that the fusion done at
11 L3-4 had not fused. Mr. Terlecky met again with Dr. Delamarter on November 9,
12 2012. Dr. Delamarter again opined that there had been no fusion at L3-4, and an
13 operation was needed to remove the old fusion instruments which had failed and
14 attempt to successfully fuse the damaged spinal disc.

15 16. In addition, Dr. Delamarter opined that a more significant problem might
16 exist at the L5-S1 disc, which might be the real pain generator. He recommended an
17 injection at the L5-S-1 level in order to see if this helped Mr. Terlecky's symptoms.
18 This injection resulted in complete, if very temporary, relief to Mr. Terlecky's
19 symptoms, indicating that surgery was needed at that area as well.

20 17. On December 25, 2012 Mr. Terlecky met with Dr. Richard Ostrup at SRS.
21 Dr. Ostrup was dismissive of the suggestion that an additional surgery would be
22 helpful. When told that Dr. Delamarter had recommended redoing the fusion at L3-4,
23 Dr. Ostrup wrote that "I am not aware that this surgeon has been able to review the
24 recent CT scan which showed the fusion at L3-4 to be solid." Dr. Ostrup also opined
25 that an injury at L5-S1 did not correlate to Mr. Terlecky's symptoms and that a
26 surgery at that level would not fix anything.

27 18. Upon review of Mr. Terlecky's records and meeting with him, Dr. Ostrup
28 opined that an additional surgery was unnecessary and would not be helpful:

1 [I]n my opinion, I do not feel that his back complaints correlate with his leg
 2 symptoms and given his failure to have achieved any significant benefit
 3 from 3 pervious surgeries leads me to believe that further surgery at this
 4 time is not likely to be helpful.

5 19. Instead of an additional surgery, Dr. Ostrup counseled that Mr. Terlecky
 6 needed a “home exercise program,” “other anti-inflammatory agents and possibly
 7 some cognitive therapy.”

8 20. On January 8, 2013 Mr. Terlecky went forward with the out of network
 9 surgery with Dr. Delamarter. During this surgery Dr. Delamarter was proven right
 10 that the previous fusion had failed. When he opened Mr. Telecky’s back he observed
 11 “gross motion” in the hardware that was supposed to be stabilizing Mr. Terlecky’s
 12 spine.

13 21. In fact, contrary to the SRS’s physician’s opinion that the L3-4 fusion was
 14 “solid,” it was so loose and unstable that it was easily pulled off of Mr. Terlecky’s
 15 spine. According to the operating report:

16 The outer disk was exposed with a #11 blade and the prosthesis was easily
 17 visible. It was quite movable with a Kocher. We then freed the edges up
 18 with a small forward angle curette until a forward curette could get inside
 19 the inner aspect of the XLIF and it was simply pulled out quite easily.

20 22. This surgery was a complete success. Follow up consultations reported
 21 that Mr. Terlecky was “doing marvelously well.” Mr. Terlecky was reported as
 22 “walking fine,” his incontinence problem was cured, his pain was significantly
 23 reduced, and x-rays showed this fusion to be holding.

24 **FIRST CLAIM FOR RELIEF AGAINST**
 25 **UHC FOR PLAN BENEFITS**

26 23. Plaintiff refers to and incorporates by reference paragraphs 1 through 22
 27 as though fully set forth herein.

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1 24. Both before and after the January 8, 2013 surgery Mr. Terlecky applied to
2 UHC to approve and pay for the consultations and surgery with Dr. Delamarter and
3 his associated physicians. UHC denied coverage for the consultations and surgery,
4 on the grounds that these were “not medically necessary” because they could be done
5 at SRS.

6 25. In fact, these treatment could not be obtained at SRS. For over a year SRS
7 refused to schedule another surgery for Mr. Terlecky. Further, at SRS Mr. Terlecky
8 was being told that his fusion was “solid” and that further surgery was unnecessary.
9 This “advice” received from SRS was proven to be wrong, as the January 8th surgery
10 showed that the fusion was not holding and that surgery cured Mr. Terlecky’s
11 symptoms.

12 26. Mr. Terlecky appealed UHC’s denial of his claim for health benefits.
13 UHC erroneously and wrongfully continued to uphold its prior determination denying
14 Plaintiff’s claim for the treatment.

15 27. Following the denial of Plaintiff’s health care benefits claims by UHC,
16 Plaintiff has exhausted all administrative remedies required under ERISA, and
17 Plaintiff has performed all duties and obligations on his part to be performed in order
18 to be eligible for health care benefits under the Medical Plan.

19 28. As a proximate result of the aforementioned wrongful conduct of UHC
20 Plaintiff has damages for its failure to reimburse medically necessary services in a
21 total sum to be shown at the time of trial.

22 29. As a further direct and proximate result of this improper determination
23 regarding Plaintiff’s health care benefit claims, Plaintiff in pursuing this action has
24 been required to incur attorneys’ costs and fees. Pursuant to 29 USC § 1132 (g)(1),
25 Plaintiff is entitled to have such fees and costs paid by UHC.

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**SECOND CLAIM FOR RELIEF AGAINST
UHC FOR EQUITABLE RELIEF**

30. Plaintiff refers to and incorporates by reference paragraphs 1 through 29 as though fully set forth herein.

31. As a direct and proximate result of UHC's failure to pay health care benefits to Plaintiff, and the resulting injuries and damages sustained by Plaintiff as alleged herein, Plaintiff is entitled to and hereby requests that this Court grant Plaintiff an Order that he is entitled to reimbursement for the costs and expense of the medical services provided to him, pursuant to 29 USC § 1132(a)(3).

**THIRD CLAIM FOR RELIEF AGAINST
UHC FOR DECLARATORY RELIEF**

32. Plaintiff refers to and incorporates by reference paragraphs 1 through 31 as though fully set forth herein.

33. A controversy now exists between UHC on the one hand and Plaintiff on the other as to whether Plaintiff is entitled to reimbursement for the medical services prescribed for and provided to him. Plaintiff seeks a declaration by this Court that he is entitled to reimbursement for the medical services by UHC.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for relief against UHC as follows:

1. Reimbursement for the medical services prescribed for and provided to Mr. Terlecky, including any and all prejudgment and postjudgment interest;
2. Reimbursement for any additional care prescribed for and provided to Mr. Terlecky for which UHC failed to properly reimburse Plaintiff;
3. For a declaration that Plaintiff is entitled to reimbursement for care provided to her by UHC;
4. For equitable reformation of the Medical Plan, so as to require UHC to compensate Mr. Terlecky for the necessary medical care he received which it refused to provide;

1 5. For injunctive relief requiring UHC to pay all health care benefits owed to
2 Plaintiff;

3 6. Pursuant to 29 USC § 1132(g), recovery for all costs and attorneys' fees
4 incurred in pursuing this action;

5 7. For prejudgment and postjudgment interest as allowed for under ERISA; and

6 8. For such other and further relief as this court deems just and proper.

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8 Dated: January 5, 2014

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10 By: S/Russell G. Petti
11 Russell G. Petti
12 Attorneys for Plaintiff Thomas
13 Terkecky
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